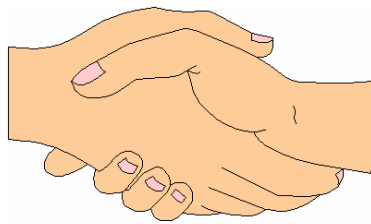


NPS Partnership Training and Development Program



Working With NPS Agreements for Partnerships: Module II Developing and Managing Agreements for Effective Partnering



**NPS TEL Event
November 4, 2004
12:00 - 4:00 p.m. Eastern Time**

Participant's Guide

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Preparing for the Course:

As a participant, we suggest that you read through this Participant's Guide and the Resource Materials before the workshop. Bring the Guide with you to the workshop. Check with your local TEL Site Coordinator (email addresses to the various TEL classrooms are on My Learning Manager) to be sure that you know the location of the room and facility where the workshop is being held. Plan to arrive a little before 12:00 p.m. ET (or at the time arranged by your Site Coordinator), as the workshop will start promptly.

How to Interact

You can interact with the course instructors and other participants during discussion sessions throughout the workshop via fax or push to talk microphones. Depending on the number of students at your location, you may have one directly in front of you or be sharing with other participants at your table.

When you want to speak, press the to talk button and say,

"This is (your first name) at (your location). I have a question (or comment)."

Then release the push to talk button. This is important. Until you release the button, you will not be able to hear the instructor. The best distance from the microphone is 10-12 inches. If you get closer than this, the instructor will have difficulty in hearing you clearly.

The instructor will acknowledge you and then ask for your question or comment. Stating your name and location not only helps the instructor, but also helps other students who are participating at different locations to get to know their classmates.

Fax you questions to 1-877-884-6282. A sample Q & A Fax Sheet is attached in the Appendix. Please DO NOT add a cover sheet. You may send faxes at any time during the broadcast, and they will be answered (time permitting) during the discussion sessions.

Course Objectives*Module II: Developing and Managing Agreements for Effective Partnering*

Participants will be able to:

- develop a pre-agreement planning strategy.
- identify the essential components of an agreement and describe the importance of each.
- describe how to effectively work with the partner(s), Contracting and Procurement, and the Solicitor's Office in drafting and getting approval on agreements.
- explain processes for monitoring, evaluating, and terminating agreements.

**Interim Partnership Process --
Phases**

- initial
- project definition
- agreement
- implementation

Initial Phase

- Identifying & describing a proposal
- Evaluating the proposal as a need and a priority
- Finding the right partner
- Evaluating readiness & capacity
- Establishing communications with NPS management about the project

Initial Phase

- Preparing a Memo of Intent
- Seeking approval to move forward to the next phase

Project Definition Phase

Collaborating with your partner to build a foundation for an effective agreement

Project Definition Phase

Steps

1. Establish a common understanding
2. Frame a shared vision
3. Define the nature of the collaboration

Project Definition Phase

1. Establish a Common Understanding

- purpose of the partnership
- expectations and needs
- shared purpose and goal(s)
- right people at the table?

Project Definition Phase

1. Establish a Common Understanding

- mutual desire to move forward?
- identify key issues and how to address
- define organization requirements / constraints for each partner
- evaluate partner skills related to proposed work

Project Definition Phase

2. Frame A Shared Vision

- what will success look like?
- objectives
- priority actions
- information needs

Project Definition Phase

2. Frame A Shared Vision

- seek alignment and win-win solutions for key issues
- define primary tasks, products, outcomes
- define roles for each partner
- identify timeframe and milestones for work

Project Definition Phase

3. Define the Nature of the Relationship

- open, credible process
- respect for each others values, needs
opinions, ideas
- honesty and trust
- candor
- tact and diplomacy

Project Definition Phase

3. Define the Nature of the Relationship

- partner commitments
 - individual action
 - mutual action / cooperation
 - decision-making
 - communications, management and support

Project Definition Phase

- prepare summary report
- check-in with Solicitor
- review
- approval of report – project ready to move
to agreement phase

Negotiating and Drafting the Agreement

- Jointly define basic partnership ingredients
- Drafting the agreement and orchestrating reviews to produce a final agreement.
- Writing the agreement section by section
- Key players to involve

Negotiating and Drafting the Agreement

- Meeting of the minds on how to work together to achieve mutual goals
- Negotiate a lasting document
- Memorialize the meeting of the minds
- Clear language that can be readily and followed

Jointly Define Partnership Ingredients

- Convene a work session
- Involve people who can speak for each partner
- Record discussions on flip chart paper, notes, post-its, computer, LCD Projector
- Array or project on the wall so all can follow
- Reach agreement as you go

Jointly Define Partnership Ingredients

#1- SET FORTH DESIRED OUTCOMES

- List outcomes each partner wants
- Identify which desired outcomes are shared
- Agree if there is sufficient common ground
- Identify what each partner will actually invest

Jointly Define Partnership Ingredients

#2 – LIST SPECIFIC PROJECTS AND PROGRAMS TO BE ACCOMPLISHED

- Be realistic
- Include “early wins”
- Array in sequence
- Add timeframes

Jointly Define Partnership Ingredients

#3 – REVIEW PRE-EXISTING AGREEMENTS

- Are they consistent with #1 and #2?
- Can the existing agreements be modified?
- Is a new agreement needed?

Jointly Define Partnership Ingredients

#4 – IDENTIFY MAJOR MILESTONES, KEY STEPS, TIME FRAMES

- Array each partner's review, approval, and decision making processes
- Fundraising, funding, donor recognition plans review requirements
- Planning, design and construction reviews and approvals
- Communication and media plans
- Ethics/conflict of interest/prohibited sources reviews

Jointly Define Partnership Ingredients

#5 – LAY OUT PARTNERSHIP WORK PLAN

- Array and get consensus on each partner's basic roles and responsibilities
- List steps and activities to accomplish results
- Assign completion dates and who is responsible

Jointly Define Partnership Ingredients

#6 - MAP OUT PROCEDURES FOR COMMUNICATION BETWEEN PARTNERS

Jointly Define Partnership Ingredients

**#7 - ASSIGN STAFF LIAISONS AS
PRIMARY POINTS OF CONTACT TO
KEEP PARTNERSHIP ON TRACK**

- Assign backups and a process for identifying replacements

Jointly Define Partnership Ingredients

**#8 – BRAINSTORM MEASURES TO
STRENGTHEN THE CAPACITY OF
EACH PARTNER TO FULFILL THEIR
RESECTIVE COMMITMENTS**

Jointly Define Partnership Ingredients

**#9 – IDENTIFY POTENTIAL OBSTACLES
OR OPPOSITION AND STRATEGIES TO
MINIMIZE OR OVERCOME THEM**

Jointly Define Partnership Ingredients

#10 – AGREE ON COORDINATION MECHANISMS TO RESOLVE DIFFERENCES THEY MAY ARISE

#11 – COMPARE PROCESSES FOR COMMUNICATING TO STAKEHOLDERS AND INTERESTED PARTIES

Jointly Define Partnership Ingredients

#12 – ALIGN PROCEDURES FOR MONITORING, MEASURING AND REPORTING PROGRESS, RESULTS, AND IMPACTS OF THE PARTNERSHIP

#13 – OTHER?

Drafting and Reviewing Tips

#1 – EACH PARTNER ASSIGN LEADS TO FORM A SMALL WORK GROUP

- Small group can make faster progress
- Leads should know their organization and have policy expertise and writing skills
- Should be empowered, know approval process and be able to facilitate approval

Drafting and Reviewing Tips

#2 - CONVENE FACE-TO-FACE AND SCHEDULE A FULL DAY

- Builds solidarity, sense of accomplishment and respect
- Can read body language and recognize lack of buy-in or discomfort

Drafting and Reviewing Tips

#3 – AGREE ON AGENDA AND APPOINT AN OFFICIAL RECORDER

- Establish rules of order
- Have a clock
- Keep meeting productive
- Respect points of view but avoid getting bogged down

Drafting and Reviewing Tips

#4 – ARRAY BASIC PARTNERSHIP INGREDIENTS

- Display on the wall
- Hand out printed sets
- Work off laptop and LCD projector
- Get approval as you go

Drafting and Reviewing Tips

#5 – RESEARCH BEST MODEL EXISTING AGREEMENTS. BE SURE TO MAKE ALL THE NECESSARY ADAPTATIONS TO FIT YOUR AGREEMENT SITUATION.

Drafting and Reviewing Tips

MODEL AGREEMENT SOURCES

- DO#20 Reference Guide
- NPS Agreements Handbook
- DO#21 Reference Guide
- NPS Partnerships Webpage
- Regional/WASO Partnership Coordinators
- Contracting and Procurement Office Files
- Other

Drafting and Reviewing Tips

#6 – IF DRAFT AGREEMENT IS NOT COMPLETED, AGREE WHO WILL PREPARE AN ELECTRONIC FIRST DRAFT FOR REVIEW.

- Often expeditious for the NPS to take this on

Drafting and Reviewing Tips**#7 – CIRCULATE THE DRAFT AGREEMENT ELECTRONICALLY FOR AT LEAST TWO REVIEWS WITH SHORT, BUT ADEQUATE, REPLY DEADLINES.**

- Check up on late comments
- Get a commitment
- Get it in writing

Drafting and Reviewing Tips**#8 – WORK OUT DIFFERENCES IMMEDIATELY AS THEY ARISE.**

- Don't let disagreements or frustrations fester
- Constantly instill a sense of momentum, consensus, and achievement

Drafting and Reviewing Tips**#9 – ONCE THERE IS CONSENSUS ON THE DRAFT AGREEMENT, GET REVIEW AND APPROVAL BY ALL PARTIES IN THE CHAIN OF REVIEW AND APPROVAL FOR ALL PARTIES.**

- Staff liaisons should shepherd and troubleshoot the broader review
- Walk it around or convene roundtable reviews

Writing the Agreement

A copy of the model agreement is included in the Appendix – See Attachment B)

In the beginning..

- Involve Regional Partnership Coordinator, Contracting and Solicitor staff early in the process
- Decide who should be at the table.
- Understand respective review and approval processes at the outset of negotiations

Introduction

- Agreement Number (where applicable)
- Agreement Title
 - Based on content and parties
- Introductory Paragraph
 - Identifies the parties to the agreement
 - List the purposes and goals of the Agreement

Definitions

- Critical Terms
- Acronyms
- Terms that the reader may assume have a different meaning than what is meant in the agreement

Background and Objectives

- Convey relevant context, history, and facts underpinning the agreement:
 - History of relationship between the parties
 - Subject matter of the Agreement
 - Facts critical to the understanding of the Agreement
 - Related existing or future agreements
 - Indicate which Agreement controls if conflict
 - Mutual and/or individual goals of each party

Authorities

- Cite relevant statutes providing legal authority to undertake actions
 - 16 USC § 6 provides NPS the authority to accept donations:

The Secretary of the Interior in his administration of the National Park Service is authorized, in his discretion, to accept patented lands, rights-of-way over patented lands or other lands, buildings, or other property within the various national parks and national monuments, and moneys which may be donated for the purposes of the national park and monument system.

- Do not cite policy documents as authority

Responsibilities & Understandings

- NPS agrees to...
- Partner agrees to...
- NPS & Partner mutually agree to..
 - Regular Meetings
 - Resolution of conflicts
 - Timely decision making
 - Anything to assist NPS and the Partner in reaching mutual goals

Term of Agreement

- Term should generally not exceed 5 years
- Can be renewed for additional periods of up to 5 years if agreed to in writing by both NPS and the Partner

Termination and Expiration

- Three options for termination
 - A. Either Party may terminate with written notice (typically 30 days).
 - B. Termination for Cause (e.g. breach of contract)*
 - C. Termination for Convenience of the Government*
- * *Options B and C are often used when there are significant implications from termination.*

Termination & Expiration

- Address what happens after termination or expiration of the agreement including:
 - Vacating Property
 - Disposition of Real Property
 - Payment of Debts
 - Return of Government Funds
 - Disposition of Donated Funds
 - Resolution of other issues, e.g. incomplete project

Key Officials

- Names of Key Officials (both NPS & Partner)
 - Responsibilities
 - Contact information
 - Notification of Changes

Liability & Insurance

Standard Liability & Insurance

- Minimum Recommended Liability Insurance***
 - \$1 Million per person /\$3 Million per claim minimum
 - Consider specific circumstances for setting amounts
- Indemnify the United States against liability
- Payment if damages caused by Partner occur
- Fire and Hazard Protection Insurance, where applicable

***Not required for state or local governments

Accounting & Reports

- In cases where NPS funds have been transferred to partners, use standard accounting language required for grants and cooperative agreements.

Required & Miscellaneous Clauses

- A. Non-Discrimination
- B. NPS Appropriations
- C. Prohibition of Lobbying with Appropriated Monies
- D. Prior Approval
- E. Compliance Davis-Bacon Act (Construction)

Required & Miscellaneous Clauses

- F. Compliance with Applicable Laws
- G. Modifications
- H. Disclaimers of Government Endorsement
- I. Merger
- J. Waiver
- K. Assignment

Required & Miscellaneous Clauses

- L. Counterparts
- M. No Lobbying for Federal Funds
- N. Agency Representation

Property Utilization

- NPS property that may be used by the Partner
- Things to address:
 - What may be used
 - Duration of use
 - Maintenance and care of property
 - Hours of operation
 - Fire hazard insurance if Partner is sole user of structures and/or property

Signatures

- Signatures, Titles of NPS and Partner Representatives

Fundraising

The “fundraising agreement” should tier off an agreement establishing the partnership.

Provide that all parties will comply with DO 21.

Package submitted for approval with all required plans: Feasibility Study, Fundraising Plan, Donor Recognition Plan, etc.

Fundraising

Identify how the Partner will raise funds.

Identify fundraising goal and timeframe.

Identify how will funds be used and whose responsibility is it to ensure they are used properly.

Fundraising

Establish limit on fundraising, management, and other overhead costs (currently no more than 20% of funds raised).

No fundraising until all contingencies under the agreement have been met.

Fundraising

Address and arrange access to NPS resources/structures for the Partner.

Address if and how NPS staff will be available to assist the Partner.

<p>Fundraising</p> <p>Require Partner to be fully qualified to seek and receive philanthropic contributions under state and Federal law.</p> <p>Provide for NPS review and approval of any fundraising campaign materials mentioning DOI, NPS, employees, or partner agreements with NPS.</p>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
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Fundraising

Communicate our expectations that NPS park partners will be supportive of the NPS and Congressional Budget Process:

The Partners will not seek appropriations from Congress to support any ongoing or proposed Partner activity or project relating to the subject matter of this Agreement or sub agreements thereto, including without limitation federal appropriations for construction, renovation, property acquisition, leasing administration or operations. Nothing in this paragraph is intended to preclude Partners from applying for and obtaining a competitive grant of federal financial assistance from a federal agency or from undertaking otherwise lawful activities with respect to any project or proposal included in the President's budget request to Congress; nor should this paragraph be construed as requesting, authorizing or supporting advocacy by nonfederal entities before Congress.

Endowments

Funds long-term operation and maintenance of NPS structures, resources, or programs.

Consider

- Appropriate use of funds
- How will funds be invested (level of risk)
- Under what circumstances may the endowment be used
- Procedures for determining the annual level of funding available;
- Who will administer the endowment
- Accounting and reporting
- Disposition of endowment assets upon closure

Fundraising

- Accounting and Reporting
- Professional Standards clause
- Annual Financial Report
- Permission to verify and audit Partners
- Separate and distinct bank account for the project

Drafting and Signing the Agreement

Regional Partnership Coordinators -

Practical advice on:

- How to keep project realistic
- Model agreements you can adapt
- Who needs to be involved
- Levels of review
- Can represent you

Drafting and Signing Tips

CONTRACTING AND PROCUREMENT OFFICERS

- Know the rules and what's legal and illegal
- Keepers of official file copies of agreements and manage IDEAS records
- Respect their busy season and cutoffs

Drafting and Signing Tips

OFFICE OF THE SOLICITOR

- Often have a specialist on agreement reviews. Develop a relationship.
- Consult early on. Can assist in negotiations.
- Most Regional Directors and Superintendents will not sign without proof of Solicitor review and approval.

Drafting and Signing Tips

- ETHICS OFFICER
- NPS COOPERATING ASSOCIATION LIAISON
- FACILITY MANAGEMENT - DEVELOPMENT ADVISORY BOARD / LIC COORDINATOR
- INTERPRETATION / EDUCATION
- WASO PARTNERSHIP OFFICE
- OTHER

Drafting and Signing Tips

FINALIZING THE AGREEMENT FOR SIGNATURE

- Staff liaisons are responsible for ensuring there are adequate reviews and it is ready to sign
- Involves thorough review and coordination between partners to incorporate all needed changes from the reviews

Drafting and Signing Tips

WHO SHOULD BE THE OFFICIAL SIGNATORS

- Usually the top executives
- Must take responsibility for implementation
- Match levels of signators
- Statewide - have Regional Director sign
- National - have Director sign
- Follow Better Partnership Program guides
- When next level(s) signators are needed

Drafting and Signing Tips

**STAGING AND SHOWCASING THE
SIGNING OF THE AGREEMENT**

- Major milestone
- Opportunity to celebrate
- Stage signing ceremony
- Publicize
- Reinforce the partnership

Drafting and Signing Tips

**DISTRIBUTION OF THE SIGNED
AGREEMENT**

- Develop a distribution list
- Distribute ASAP
- Hard copy vs electronic
- Maintain record copies
- Official copy logged in IDEAS database

Managing Signed Agreements

- Agreement is evidence of initial commitment and good intentions
- Implementation produces results
- Mutual monitoring, reporting and evaluation are critical

Managing Signed Agreements

Assign staff liaisons for monitoring, reporting, and evaluating

- Identify in the agreement - ensure continuity
- Must have full support of the signators / top level
- Eliminate barriers and administer first aid

Managing Signed Agreements

Establish measurable milestones

- Most partnerships are 3-5 years plus
- Need incremental timetables and measures
- Important to be realistic and adjust when appropriate

Managing Signed Agreements

Schedule periodic reports and evaluations over period of agreement

- Quarterly to six months for first year or two
- Then annually
- Two years for more rigorous outside reviews
- On-site, confidential interviews

Managing Signed Agreements

- Reports should be reviewed in draft and presented in writing for the record
- Brief all players and top managers

Managing Signed Agreements

- Monitoring is a day-to-day continuous process
- Staff liaisons stay tuned-in
- Sense problems and difficulties – resolve them

Managing Signed Agreements

Troubleshooting Needs to be Timely and Objective

- Always get both/all sides of the story and each person's perspective on what it would take to solve the problem / impasse.
- All sides must feel they have been listened to.
- The real problem is not always the obvious problem.

Managing Signed Agreements

Troubleshooting Needs to be Timely and Objective

- Focus on the solution without assigning blame.
- Co-mingling funds and staff offer significant challenges – have parties agree to make an exception or get special authority eg RNSP.
- Discussion

Amending, Renewing and Terminating Agreements

Amending an Agreement

- Amendments should be expected.
- Amendments can be relatively painless.
- Only amend what is crucial.
- Follow same review, approval and signing path.

Amending, Renewing and Terminating Agreements

Renewing an Agreement

- For an additional term or year-to-year.
- Right of renewal clause.
- After 3-5 years, there are usually terms to adjust and/or add or delete.
- Anticipate renewal 3-4 months before the expiration date. Liaisons should manage the update.
- Same review and approval process.

Amending, Renewing and Terminating Agreements

Terminating an Agreement

- Rare. Last resort. Often just fade out.
- Awkward at best. Can be political and public relations nightmare.
- Exhaust all means to "save the marriage."
- Consult with management, solicitor and public relations.
- Activate the 30 or 60-day termination clause in the agreement.

Appendix

(ATTACHMENT A)

**Trust for the National Mall/ Core Monument Area
Draft Summary Principles & Actions 12-17-02**

1. What are the conditions that must exist for NPS and the Trust for the National Mall to be successful?

A. Clarity & Common Ground

We Agree:

- To develop a mutually agreed upon and clearly understood vision
- To develop a clear understanding of partnership and clear roles for each party
- To identify initial expectations, set benchmarks and define success
- To enter into a formal agreement to work together

B. Flexibility, Communication & Trust

We Agree:

- To practice communication that is direct, honest and open
- To include the “ground level” in the decision making process
- To protect and assist each other and to nurture the partnership
- To meet frequently to identify what is working and what is not
- To be open to alternative ways of thinking to insure creativity in problem solving

C. Resources and Support

We Agree:

- To provide the resources to get the job done
- To accept donations
- To be open and enthusiastic about the process and end goal

D. Expectations

We Agree:

- To ensure that partner and donor expectations are consistent with NPS vision
- To advocate recognition that reflects personal satisfaction rather than recognition that is carved in stone
- To accept that this project requires unusually long-term patience and planning
- To acknowledge that in our lifetime we may not fully benefit from all of the work we are about to undertake

E. Outcomes

We Agree:

- To focus on implementation that is lasting and sustainable
- To insure that partners, as well as the lead organizations are encouraged and allowed to contribute ideas and expertise in addition to money
- To maximize support within the NPS and NPF. The NPF may provide existing partners, relationships, database management and financial management infrastructure where appropriate and if deemed important a common board member
- That this collaborative effort aims to be a permanent partner of the NPS

2. What are the goals and objectives of this partnership?**A. Goal**

We agree:

- To revitalize and restore the National Mall and bring it to life

B. Objectives

We agree:

- To adopt a process of renewal, restoration and ongoing perpetual maintenance
- To prepare a restoration plan in two years and use this process to cement the partnership
- To maintain the defined area in a sustainable manner using technological advances
- To improve what currently exists and make it a public space that is truly better for the people
- To achieve a discernable difference in an agreed upon area on the Mall in the next 2-5 years with emphasis on the:
 - pools
 - grass
 - trees
 - benches
 - sanitation
 - trash collection and recycling

C. Prepare a Vision

We agree:

- To collaboratively determine and articulate a vision in preparation for a new plan
- To determine the baseline for the Mall that describes it at its best in the past and in its current state using information from a wide variety of historical and current sources
- To prepare an appropriate Cultural Landscape Report/ Plan, drawing on the best ideas from previous plans
- To prepare a Use Plan drawing on previous plans where available
- To draw on and learn from the vision and experience of the Central Park Conservancy and GGNPA

D. Engagement

We agree:

- To communicate our objectives for the Mall in order to encourage the public to visit the area, use and return to it, support our efforts, and to provide monetary support
- To promote the partnership publicly
- To recognize the philanthropic character of the Trust
- To use the existence of the partnership as an important part of the campaign to build more recognition for the Mall
- To energize the local community using ideas and experiences of the GGNP
- To work towards creating a cultural change within the NPS so the agency embraces friend-raising and community involvement
- To educate the public about the challenges and needs of urban parks

E. Implementation

We agree:

- To acknowledge and use where appropriate existing plans and information- the Streetscape Manual and Cultural Landscape Reports and treatment recommendations
- To use the best available planners and designers
- To be aware of the issues of over development and new visitor facilities
- To accommodate public use while increasing sustainability
- To look at the green infrastructure approach; rotations, cordoning-off, structuring management to deal with wear-and-tear, encourage greening, addressing work above and below ground (i.e. root system impacts, permanent conduits for electric and water systems)
- To start small. Become successful in the first 2-5 years, and show the public that the Mall has been made better place (See B. Objectives)

F. Constraints & Influences

We agree:

- To identify the constraints under which the NPS operates and identify which ones hinder restoration of the National Mall
- To formally articulate the decision-making process within the partnership
- To assess the reviewing bodies who are responsible for protecting/preserving the aesthetics of the Mall. FAC, NCPC, Congress etc.
- To ensure that all activities, special events, public gatherings are consistent with our 1st Amendment Freedoms
- To address the impact of, and policy towards the homeless. Study Bryant Parks approach to this issue
- To acknowledge that we aren't looking to fund additional development in the form of memorials originating in Congress
- To apply the President's Park design standards to the whole of the agreed upon boundary

G. Funding and Donors

We agree:

- To publicly acknowledge that the NPS does not have the resources needed to maintain the Mall to the standards befitting its situation
- To work to build an endowment for maintaining the improved state of the Mall
- To explore multiple sources of funding, include the city
- To acknowledge that even when we start small a big vision is needed to sell the project to future donors
- To be willing to walk away from the wrong donor

3. What are the key terms that we need to define at the start of this collaboration?**Restoration**

We agree:

- To accept the term restoration as key to this endeavor

- To define restoration so everyone can understand and is comfortable with what it implies

Decision-making

We agree:

- To define the decision-making part of the partnership, and identify who makes what decisions
- To define what is the process that go through to arrive at decisions
- To share the rules and regulations within which the NPS operate. Partner needs to understand and be willing to accept them
- To define the NPS operational constraints that may affect the project

National Mall Boundaries

We agree:

- To determine collectively what this area is geographically, even if is outside what is technically “The National Mall”
- That the area covered by this partnership and fundraising efforts may require a branding effort to educate the donors and general public

Class A Maintenance

We agree:

- To define “Class A Maintenance”

H. Sponsorship and Donor Recognition

We agree:

- To work within the regulations of the NPS to determine levels donor recognition and sponsorship
- To accept that contributors, donors and sponsors be recognized as partners
- To examine the Georgetown Waterfront fundraising as an example of problems that can occur when you ask people to give money for a federal project
- To approach major foundations for their expertise as well as dollars, and to involve them in the decision-making process
- To foster contributor ownership and input at the earliest possible stage

4. What information is available to assist this effort? Where is the information? How can it be accessed most expediently? Who can help collect and organize this information?**A. Cultural Resources**

We agree:

- To locate the existing Cultural Landscape Plans, and determine which ones should be incorporated into the plan
- To bring the NPS Cultural Resource people together
- To locate the Monuments Master Plan—there are six sites that are available now in area 1
- To acknowledge that we have a National Register Nomination to use

- To research collectively plans and historic documents
- To access all the Mall related information available around town, at the NCPC, Archives and various museums
- To recognize all previous plans, from L'Enfant's to S.O.M.'s as well as those that fall in between
- To create an objective fact sheet on the Mall to educate the public as well as potential donors

B. Sustainable Concepts and Natural Resources

We agree:

- To deal with the highest forms of technology
- To attract donors based on the most recent sustainable technology with an eye to the future
- To create an infrastructure that insures that the Mall is sustainable
- To access Jim Sherald and others from the NPS Center for Urban Ecology and capitalize on their expertise
- To work with Rob DeFeo and all NPS cultural landscape specialists

C. Concessions and Vendors

We agree:

- To review when appropriate plans with GSI—food purveyors on the Mall to avoid operational disconnects
- To review when appropriate plans with Tourmobile to avoid operational disconnects

D. Coordination

We agree:

- To review WH EIS document—Consultation and Coordination
- To have a dialogue with all reviewing Commissions

Education

We agree:

- To work with the Parks & History Association re education materials and sales

Federal Agencies

We agree:

- To acknowledge the 32 agencies that comprise The Interagency Workgroup for the Mall, Chaired by the Federal Highway Administration
- To acknowledge elements from the Streetscape Manual— prepared by Interagency Working Group for the Mall, led by Federal Highway Administration, in the planning process

National Park Foundation

We agree:

- To avoid reinvention in matters of; fund-raising, direct mail, corporate partners
- To utilize the NPF's capacity to reach-out, and involve existing partnerships in this effort

Other Cities

We agree:

- To examine what other cities have done to restore their urban parks
- To thoroughly examine GGNP, Central Park and other relevant urban park restorations that will save us from reinventing the wheel

5. Who else should be involved in this collaboration? How should they be involved? When should they be involved?**A. Principles**

We agree:

- To be a BI-partisan partnership to insure long-term success and sustainability.
- To insure the design is not borne simply of a desire to please the Trust or the NPS but is the right one for the place and for the people
- To insure that the right people are involved at the right time
- To determine the core group of decision makers
- To acquire and mobilize all available ambassadors

B. Strategy

We agree:

- To determine strategically how we work with the public
- To start small and let success grow the project
- To share information up the chain-of-command
- To invite the outreach groups after the first stage/step of the agreement
- To involve the media after a solid framework has been established
- To jointly determine the campaign's messaging
- To jointly solicit buy-in from the following groups: DC, NCPC, FA, SHPO, ACNHP, ANC, Civic Council, and Depts. Congressional Committees, backdoor neighbors, Smithsonian, National Gallery, other adjacent landowners AND to do so before going public

C. Groups to be involved

We agree:

- To include, inform and or work with the following when appropriate; National Capital Planning Commission, Fine Arts Commission, National Trust for Historic Preservation, GSA, Architect of the Capital, The Botanical Gardens, The Downtown BID, The Golden Triangle BID, DDOT, DC Historic Preservation Officer, DC Convention and Visitor's Bureau, Heritage Tourism Group, Historic Preservation Review Board, DC Office of

Planning, Greater Washington National Park Fund, The Smithsonian, The National Gallery, NPF, The National Parks Conservation Association, National Parks & Recreation Association, neighborhood advisory councils, The Sierra Club for philanthropy and advocacy, State Historic Preservation office, Trust for Public Land, Washington Bicycle Club, WH Council Office

D. Commissions

We agree:

- To acknowledge the significance of Reviewing Commissions--Fine Arts, NCPC as well as the potential for them to make significant contributions to this project
- To acknowledge the benefits of partnering with them, and accessing their expertise and potential influence from the beginning

E. Concerns

We agree:

- To allay the fears and hesitations the NPS may feel towards a new unknown partner, through constant communication and accessibility

F. The Hill

We agree:

- To involve Congress as early as possible
- To actively seek champions of this effort on the Hill
- To explore the appropriations process as part of our funding efforts
- To acknowledge that work on the Mall may at times necessitate closing sections of the park which will be a congressional concern

6. Where is the project area boundary?

We agree:

- That the Stage One boundary will start at the base of the Capital 1st Street, extend to the Lincoln Memorial, include the Tidal basin and West Potomac Park and the Elipse and TBD the President's Park?
- To adhere where possible to both the L'Enfant and McMillan plans
- To explore how the inclusion of the President's Park would represent alternative management policies
- To understand the impact of including an area that is a designated Heritage Area
- To consider the size of boundary in light of raising money
- To accept that the boundary must hold together when we tell the story and must not be so vast as to change the scale of the project

7. What is the name of this effort?

We agree:

A. Trust for the National Mall

- That for the time being this effort will be called the Trust for the National Mall
- That it will be worthwhile to explore names that derive from the vision

8. How do we best communicate, to the public and to other park partners, what we are doing? What is the "message"?

A. Current Identity

We agree:

To jointly address the question of the Mall's lack of identity

B. Overall Message(s)

We agree:

- The Trust has been formed by private citizens who care about the condition of America's foremost public gathering place, and wish to create an organization to maintain it as a world class area for current and future generations, in cooperation with the legislative stewards
- The Trust will work to connect Trust to the larger National Park System and will work with the NPS Message Project
- The Trust will work to connect people to the Mall—to enhance their experience
- To educate the public on the significance of healthy parks, and show that when a park isn't right, a city isn't right and through this alliance we have an opportunity to correct this
- That the Mall was at its inception a green space for the city
- That the Mall should inspire enjoyment, reverence, relaxation, education and reflect the mission of the NPS and be aesthetically worthy of its situation

C. Timeline

We agree:

- To look at the Mall's history through the last 200 plus years
- To show the public the future of the nation's back yard
- To publicize the steps required to reinvigorate the National Mall so that the public will be patient with the process

D. Developing a Message

We agree:

- To help people understand that the NPS plays a significant role in the quality of life for the greater Washington area
- To review parks' messaging techniques in other cities. Philadelphia, SF, NYC
- To explore how the reinvigoration of the Mall relates to the Greater Washington National Park Fund
- To designate a mutually agreed upon NPS message carrier

E. Techniques

We agree:

- That a public announcement will come when all key parties are on board
- To continue to meet one-on-one to build a body of allies and supporters and to gather intelligence
- To get people engaged—from planting bulbs in the fall, to assisting lost tourists
- To arrange a tour of Central Park and other urban parks in NY for the principles to greater understand what is possibleTo present this as a positive initiative so it does not appear that the NPS has been less than successful, but rather that the NPS has embraced the opportunity to fully realize the potential of the National Mall

(ATTACHMENT B)

Note to Reader: NPS staff often models new agreements, including new fundraising agreements, on past agreements. Reviewing past agreements is a useful process that assists in formulating new agreements. However, drafters often rely too heavily on past agreements when crafting new agreements, e.g., they copy provisions from old agreements into new agreements without sufficiently analyzing whether it is appropriate to do so given the facts at hand. This approach to crafting agreements can result in confusion between the parties, create legal problems, and hinder successful agreement implementation.

This model agreement is intended to teach agreement drafters how to think through what should be included in a fundraising agreement and why it should be included. This model agreement is not intended as a template to be copied verbatim. Nevertheless, the model agreement does contain some standard contract provision that in most cases should be included in new agreements. Those provisions are italicized and explained below.

Please check DO-21: Donations and Fundraising for updates to policy regarding fundraising agreements and modifications to this model agreement.

AGREEMENT

between the

**THE UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE**

and

PARTNER ORGANIZATION(S)

Introductory Paragraph:

The introductory paragraph restates the names of the parties to the Agreement. The abbreviated form of the parties' titles should be introduced here, if appropriate. Lastly, the purpose of the agreement should be stated. For example:

This Agreement is entered into between National Park Service (NPS) and Park Partner (Partner) for the purpose of raising funds to construct, restore, and maintain facilities at Picture Perfect National Park (Park).

I. Definitions:

Define terms of art, critical terms, acronyms, etc., which will be used throughout the agreement. Do not assume the reader knows these definitions. NPS staff must determine on a case-by-case basis whether a definition section would be helpful to readers of the agreement.

II. Background and Objectives:

As a general rule, background information and the objectives of the parties are explained through a series of clauses at the beginning of an agreement. These clauses should concisely convey the relevant context, history, and facts underpinning the agreement. Additionally, they should convey the intent of each party entering into the agreement. When drafting these clauses try to educate the reader on:

- A. Who the parties to the agreement are;
- B. The history of the relationship between the parties;
- C. The subject matter of the agreement;
- D. Facts critical to understanding the agreement;
- E. Related existing or anticipated future agreements. Describe how such agreements relate, or will relate, to the fundraising agreement, e.g., do they control in the event of a conflict with fundraising agreement. Also, provide a citation to existing related agreements, e.g., Agreement of March 3, 2000. Further, include an NPS agreement tracking number if applicable.
- F. The mutual and / or individual goals of each party.

Do not underestimate the importance of the Background and Objectives section of an agreement. Often the original parties to the agreement move on, or their perspectives or recollections change over time. Furthermore, if an agreement is litigated, courts often look at the background and objects section to assist them in understanding the original intent of the parties.

While there is technically no limit on the length of the Background and Objectives section, if you've written more than a page and a half of explanatory clauses you should review the section to see whether you've included unnecessary information.

III. Authority:

Before Federal agencies or bureaus take any action they must have legal authority authorizing the action. The authority section of an agreement lists the legal authorities NPS is relying on to support the action it will take under the agreement. Where our

partner is entering into an agreement pursuant to a statutory authority, e.g., where our partner is another governmental entity, the legal authorities the partner is operating under should also be listed in the legal authority section of the agreement.

Legal authority is derived from laws or regulations implementing laws. Generally, the underlying law providing legal authority for an action, as opposed to its implementing regulation, is cited in the authority section. Documents such as Executive Orders or NPS Director's Orders do not provide legal authority and should not be cited as legal authority. They may, however, be cited in the Background and Objectives section, or elsewhere in the agreement to help explain NPS and partner motivations, goals and objectives.

Authority to undertake an action can be expressed in a statute or implied by a statute. Always try to list legal authorities that expressly authorize the activity contemplated. For example, NPS authority to accept some donations is expressly provided for by 16 U.S.C. § 6. This statute provides that:

The Secretary of the Interior in his administration of the National Park Service is authorized, in his discretion, to accept patented lands, rights-of-way over patented lands or other lands, buildings, or other property within the various national parks and national monuments, and moneys which may be donated for the purposes of the national park and monument system.

16 U.S.C. § 6 should be cited in most, if not all, fundraising agreements.

Statutes can also be cited as authority if the action contemplated is implied by the statutes' terms. In the context of donations, authority to provide limited assistance to a partner in soliciting donations is implied. One example of limited and appropriate solicitation assistance is providing a partner's prospective donors with a list of NPS needs.

While 16 U.S.C. § 6 and other statutes provide NPS authority to accept donations, acceptance of a donation must still be consistent with other laws such as park organic legislation. Thus, NPS cannot accept a donation that will be used in a manner that will impair park values and purposes. Lastly, depending on the nature of the donation, its acceptance may be contingent on other factors such as the completion of required environmental compliance process or compatibility with a park unit's general management plan.

Sometimes, fundraising agreements contemplate more than just fundraising. For example, they might authorize a partner to undertake a living exhibit pursuant to 16 U.S.C. § 1a-2(g), or they may authorize some other cooperative relationship pursuant to NPS cooperative agreement authority 16 U.S.C. § 17j-2(e). While it is possible to create hybrid agreements and many such agreements exist, it is preferable to generate an initial "general agreement" governing the relationship of the parties. Subsequent fundraising

initiatives, of which there may be many during the life of a partnership relationship, can be memorialized in separate agreements that build off the general agreement.

The Solicitors Office can assist NPS staff in sorting through fundraising authority issues. Furthermore, the Solicitors Office should be consulted early in consideration of a partnership relationship to help NPS and its potential partner understand what is legally possible.

IV. Responsibilities and Understandings of the Parties:

The Responsibilities and Understandings section sets out what each party agrees to do. Each party should be assigned its own subsection listing its own responsibilities and understandings. For example, there should be a subsection entitled “NPS agrees to” and counterpart subsections should be established for each additional partner. This approach to drafting sometimes creates apparent redundancies between the sections. That is fine. When it comes to memorializing each party’s intent, the need for clarity prevails over the desire for brevity.

Sometimes, NPS and its partners will jointly agree to an understanding or jointly agree to undertake an action. These joint understandings and agreements should be captured in a separate subsection. For example, it is a good idea to jointly agree on dispute prevention and resolution processes such as staff level consultations, gradual elevation of unresolved disputes, and perhaps the introduction of a mediator. Such provisions are perfect for the “jointly agree to” section.

Facts, statutory authorities, policies, partners, partnership activities, goals, and objectives, etc., differ from agreement to agreement. Therefore it is impossible to provide standard language for incorporation into the Responsibilities and Understandings section of all fundraising agreement. Nevertheless the following recommended provisions should be considered for inclusion in the Responsibilities and Understanding section of any fundraising agreement. The following list is not exhaustive. NPS staff, and in some instances the Solicitor’s Office, must determine, on a case-by-case basis, what additional provisions should be included in a particular agreement.

A. Responsibilities and Understandings Related to Implementation of Director’s Order 21

Directors Order 21 (DO 21) and the accompanying reference manual constitute NPS’ policy on fundraising and donation acceptance. This policy was crafted in light of applicable laws, regulations, and Departmental and Administration policies. The following provisions address DO 21 considerations.

1. All fundraising agreements should expressly provide that NPS and the partner will comply with DO 21, as amended, supplemented or superseded.

2. Identify what the partner will do under the fundraising agreement, e.g., raise funds, or seek in-kind good or services.
3. Include a clear partner fundraising and/or donation goal over a specified period of time.
4. Include a discussion of how donations will be used and who has responsibility for ensuring their use, i.e., will the partner expend donated funds or will NPS expend them and under what circumstances will funds be expended.
5. Include the DO 21 provision limiting expenses a partner can incur in association with its fundraising efforts. The current limit on the amount of funds that can be retained by a partner is 20 percent of funds raised.
6. Include a provision requiring NPS authorization prior to the announcement of a public fundraising campaign.
7. Include a provision prohibiting fundraising activities prior to completion of necessary deliverables or contingencies.
8. Provide for appropriate partner access to NPS resources, structures, etc., in furtherance of its philanthropic efforts. The use of Special Use Permits to authorize such activities may also be contemplated in this section of the Agreement.
9. Address conditions under which NPS staff will be made available to assist a partner in its fundraising efforts, e.g., by presenting park needs to potential donors or by providing tours of park resources.
10. Include a provision requiring the partner to be fully qualified to seek and receive philanthropic contributions under state and federal law.
11. Provide NPS the ability to review and approve partner proposed contractors, e.g., professional fundraisers, etc., that the partner is considering hiring. This provision will assist NPS and its partner to determine whether a proposed contractor has the appropriate experience and reputation to undertake the activity contemplated.
12. Provide that all third party agreements of a material nature be submitted to NPS for review and approval. Examples of such agreements include proposed agreements with firms hired to assist with fundraising or to undertake construction within a park unit.
13. Provide for NPS review and approval of any fundraising campaign materials mentioning the Department, NPS, employees thereof, or partner

agreements with NPS. This provision assists NPS in ensuring that NPS' views are appropriately represented to potential donors.

14. In the "jointly agreed to section" consider including, at a minimum, provisions that:
 - a. Ensure regular meetings, to foster close cooperation on agreement implementation;
 - b. Commit the parties to working together to resolve differences without quick resort to elevation within the partner organizations or appeal elsewhere within NPS or the federal government;
 - c. Commit the parties to timely decision making on matters necessary to ensuring proper implementation and administration of the agreement.
 - d. Provide other provisions to assist the parties in reaching their mutual goals.

B. Partnership Construction Projects

In June 2004, the NPS introduced an interim policy to guide partnership construction projects as part of an effort to standardize the way the agency structures, manages, implements and monitors some of our partnership agreements, including fundraising agreements, plans and campaigns, the relationship between these efforts, our priorities for funding park projects, and communication with the Congress.

Your regional partnership coordinator can walk you through the process and help you determine whether or not to pursue such an arrangement. Additional training on this topic will be provided in the spring.

V. Endowments

An endowment is a restricted account. The principal (or corpus) of the account is generally not expended but the interest and/or earnings generated is used to fund annual programmatic goals and/or operations and maintenance. NPS does not establish or manage endowments because NPS is not authorized to retain interest or investment profits on funds under its control.

An endowment may be authorized in a partner fundraising agreement or a similar agreement. As a practical matter, a partner is likely to have more success fundraising for an endowment if the endowment is a component of the overall project fundraising, e.g., partner fundraising for the construction of a visitor center and an endowment for its operation and maintenance. NPS may also authorize an endowment that does not require

fundraising, e.g., the partner provides a lump-sum donation. A decision to authorize an endowment independent of a fundraising effort, for example all funds if the endowment itself was itself a donation, would also be documented in an agreement.

The following considerations should be addressed when creating an endowment and must be documented in the fundraising agreement or agreement establishing the endowment:

- A. General guidance regarding the use of endowment funds must be included in the agreement. While a partner may be consulted on specific uses of endowment funds to ensure consistency with the agreement, NPS must maintain discretion to expend endowment funds consistent with the terms of the agreement in order to ensure proper management of resources under its charge and its ability to accurately forecast the availability of funds to care for these resources;
- B. How endowment funds will be invested, e.g., what is a permissible level of risk;
- C. Under what circumstances, if any, may the endowment corpus be used;
- D. Procedures for determining the annual level of funding available;
- E. Who will administer the endowment, e.g., NPS and the partner may decide to allow the partner to establish and manage the endowment for NPS' benefit or might look for a third-party to set up and managed by the endowment;
- F. The fundraising or endowment agreement should include a provision addressing disposition of the endowment upon termination of the agreement. In most instances, NPS would generally require that the corpus of the endowment be transferred to the NPS upon termination for uses consistent with the donors' intent and if that purpose cannot be met, the funds may be returned to the donor(s). Alternatively, NPS, in consultation with the partner organization may choose a successor to administer the endowment.
- G. Procedures for annual accounting and reporting.

VI. Property Utilization

The Property Utilization section should be used to describe NPS property that may be used by a partner in obtaining the goals and objectives of an agreement. For example, NPS may permit an organization to use surplus office space and associated NPS equipment in a park to assist the partner in attaining fundraising campaign goals. The property utilization section addresses, in part, what property may be used by the partner, the duration of that use, maintenance responsibilities, site and safety conditions, payment of utilities, compatibility of partner activities with other NPS responsibilities, hours of operation, etc.

VII. Term of Agreement

Under current NPS policy the term of a fundraising agreement should not exceed 5 years. Fundraising agreements can be renewed for additional periods of up to 5 years if agreed

to by the parties. If a general agreement was used to memorialize the initial relationship between the parties, the fundraising agreement should run no longer than the term of the general agreement. The following is standard language that may be used to establish the term:

Unless earlier terminated by operation of the terms of this Agreement, or by agreement of the parties in writing, this Agreement shall expire on _____ date.

VIII. Termination and Expiration

The termination and expiration section addresses: 1) the party's ability to terminate the agreement; and 2) what happens to donations after termination or expiration of the agreement. Generally, any party can terminate a fundraising agreement with 30 days notice to the other party. Depending on the nature of the agreement, e.g., risk to the Government, it may be appropriate to include a clause permitting termination for the convenience of the Government (TFC). For example, a TFC should always be included in an agreement authorizing construction in a park. Below are examples of termination clauses that may be incorporated into fundraising agreements.

- A. The following termination clause alternative does not require cause, such as breach of the agreement, for termination. This provision may be appropriate where the primary function of an agreement is to facilitate philanthropic donations:

Either party may terminate this Agreement for any reason by giving thirty (30) days written notice of termination, effective at the end of the thirty (30) day period.

- B. The following alternative requires cause for termination. This provision is appropriate where there one or more of the parties to the agreement has an enforceable obligation to the other, e.g., a party has agreed to generate some work project:

If either party fails to observe the terms and conditions of this Agreement, the other party may terminate this Agreement for default without any legal process whatsoever by giving thirty (30) days written notice of termination, effective at the end of the thirty (30) day period.

- C. The following TFC clause may be used in conjunction with either alternative above.

The National Park Service may terminate this Agreement for the convenience of the government, at any time, when it is determined to be in the best interest of the public to do so. The effected parties shall be notified within 5 working days following termination.

Upon termination or expiration of the agreement, donated goods or funds and interest and earnings thereon, less expenses reasonably incurred by the partner (taking into account the DO 21 cap on fundraising expenses), should be transferred to NPS or an NPS designee for uses consistent with the terms of the agreement, or consistent with the purposes for which they were donated. The agreement should also provide that, if donations cannot be used in the foregoing manner, the donations should either be returned to the donor, or the donor should be contacted for further instructions regarding disposition of the donation.

IX. Key Officials

List the names and contact information of Key Officials of each organization responsible for administration and implementation of the agreement. Parties should be notified if a Key Official changes. Key Officials play a very important role in ensuring smooth implementation of fundraising agreements. Therefore, consideration should be given to whether the Key Official has the time and expertise needed to discharge this function.

[Note to Reader: The following Articles relating to insurance, liability, accounting, compliance with laws, agreement management, etc., cannot be easily modified or deleted without risking harm to NPS interests. Therefore, modifications to such standard provisions are rarely authorized by NPS. The standard provisions appear in italics below. When needed, discussion of these provisions appears as normal text. The discussion section addresses when NPS staff may have flexibility to modify the standard provision at issue.]

X. Liability and Insurance

A. Standard Liability and Insurance Provisions

Below are a number of liability and insurance provisions. Provisions 1 and 2 below are required. Note, however, that provision 1 may be modified. Provisions 2 and may be required depending on the facts surrounding the partnership.

1. *In connection with activities that are the subject of this Agreement, the Partner will procure comprehensive general liability insurance and employee liability insurance from a responsible company or companies with a minimum limitation of One Million Dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident. The policies shall name the United States as an additional insured, shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Prior to beginning the work authorized herein, the Partner shall provide the NPS with confirmation of such insurance coverage. Insurance coverage shall be reviewed every two years beginning on the date of execution of this*

Agreement and shall be modified if necessary to ensure consistency with generally accepted insurance practices and NPS policies.

Provision X.A.1 contains the recommended minimum insurance coverage for NPS partner activities. But the \$1 million per person or \$3 million per claim figure used in this standard is a guideline only. NPS staff must use due diligence in determining the appropriate amount of coverage for each project. For example, the \$1 million / \$3 million minimum may be sufficient to cover most partner sponsored fundraising events within a park, e.g., a tour of a site by prospective donors. However, if a partner tour involves use of watercraft, the insurance coverage needed may be significantly higher. Conversely, it may be appropriate to require less insurance coverage if the partner rarely enters the park. Lastly, NPS does not require state or local governments to acquire insurance. These entities are considered self insured.

NPS Partnership Council is currently reviewing insurance requirements to determine whether additional guidance respecting insurance is appropriate. Since NPS partners must indemnify NPS for losses incurred as a result of their or their agents' actions, it may be in the partner's best interest to research appropriate insurance coverage. Information regarding appropriate coverage generated by the partner's insurer may be helpful to NPS' analysis of insurance sufficiency, but NPS should not defer to such information without critical evaluation.

2. *The Partner assumes liability for and does hereby agree to, save, hold harmless, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts' fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way arising out of, the activities of the Partner, its employees, agents or contractors under this Agreement. This indemnification shall survive the termination or expiration of this Agreement.*

On occasion partners request inclusion of a provision in an agreement requiring NPS to indemnify them for claims arising in association with NPS actions. The grant of such indemnity would cause an Anti-Deficiency Act violation. A partner may seek redress for claims against NPS only through application of the Federal Tort Claims Act.

3. *The Partner will pay the United States the full value of all damages to the lands or other property of the United States directly caused by the*

Partner, its employees, agents, representatives, or contractors.

This provision should be included where a Partner is occupying and using NPS property, e.g., where its offices are located in a park owned structure.

The Partner shall procure and maintain fire and hazard protection insurance in an amount equal to the replacement cost of NPS structures and facilities utilized by the Partner. The Partner shall provide the NPS with confirmation of such insurance coverage. Any repairs or reconstruction carried out on structures and facilities on Park land with the proceeds of this insurance are subject to approval by the Superintendent.

Consider inserting provision X.A.4. into agreements that allow a partner to occupy an NPS structure for partnership related purposes. NPS may consider waiving or pro-rating this provision where a structure is shared with NPS employees, e.g., where NPS operates the visitor center and the partner operates a bookstore within it. This insurance provision is used in addition to - and not in place of – other required insurance provisions discussed above.

XI. Accounting and Reports

Below is a series of general accounting provisions that can be included into almost any fundraising agreement. They are designed to account for donations held by a partner for the benefit of NPS. NPS may want to include additional reporting requirements on a case-by-case basis. Where NPS is transferring money or other things of value to a partner please refer to the section in Director's Order 20: *Agreements* regarding grants and cooperative agreements for standard accounting provisions that comport with Office of Management and Budget requirements.

- A. *The Partner will maintain accounting books and records under a system of accounts and financial controls meeting accepted professional standards for a non-profit charitable organization.*
- B. *The Partner will furnish to NPS an annual financial report on _____ date of each year including financial statements audited by an independent licensed or certified public accountant. The annual financial report shall be in such detail that all interest, investment income, gross receipts and expenses incurred by, or accruing to, the Partner in connection with activities under this Agreement will be clearly addressed.*
- C. *The Partner will permit NPS or its designee, or the Comptroller General to verify and audit the financial report from the books, correspondence, memoranda and other records of the Partner, during the period of this Agreement, and for such*

time thereafter as may be necessary to accomplish such verification.

- D. *The Partner will ensure that any funds raised under this Agreement are kept in a separate and distinct bank account from other funds held by the Partner.*

Provision XI.C. is intended to prevent commingling of funds with a partner's general operating funds or, in some cases, funds raised by a partner and designated for projects unrelated to the fundraising agreement.

XII. Required and Miscellaneous Clauses

- A. *NON-DISCRIMINATION: All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246; Title VI of the Civil Rights Act of 1964, as amended (78 Stat. 252; 42 U.S.C. § 2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. § 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§ 6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.*

Provision XII.A. is self explanatory.

- B. *NPS APPROPRIATIONS: Nothing contained in this Agreement shall be construed as binding NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, and available for the purposes of this Agreement for that fiscal year, or as involving the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.*

Provision XII.B. is designed to help ensure that NPS and its employees comply with the Anti-Deficiency Act. Under the Act, NPS cannot obligate funds not yet appropriated by Congress.

- C. *LOBBYING WITH APPROPRIATED MONEYS (18 U.S.C. § 1913): No part of them money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Member of official, at his request, or to Congress or such official, through the proper official channels, requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making*

any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31.

Provision XII.C. bars partners and NPS from expending or authorizing the expenditure of appropriated funds for lobbying activities.

D. PRIOR APPROVAL: The Partner shall obtain prior written approval from NPS before:

1. *Holding special events within the Park;*
2. *Entering into third-party agreements of a material nature;*
3. *Assigning this Agreement or any part thereof;*
4. *Constructing any structures or making any improvements within the Park;*
5. *Releasing any public information that refers to the Department of the Interior, NPS, the Park, any NPS employee (by name or title), this Agreement or the fundraising campaign or Projects contemplated hereunder.*

Provision XII.D. is an example checklist of items requiring prior NPS approval. This prior approval provision is generally used to restate or consolidate prior approval requirements contained in other parts of the agreement. However, new prior approval requirements may be added here as well. The above examples of prior approvals are representative of prior approval provisions found in many fundraising agreements. But they may not be appropriate for inclusion in all agreements.

E. Compliance with Applicable Laws: *This Agreement and performance thereunder is subject to all laws, regulations and management policies governing NPS property and resources, whether now in force or hereafter enacted or promulgated. Nothing in this Agreement shall be construed as in any way impairing the general powers of the NPS for supervision, regulation, and control of its property under such applicable laws, regulations, and management policies. Nothing in this Agreement shall be deemed inconsistent with or contrary to the purpose of or intent of any Act of Congress or laws of the District of Columbia.*

Provision XII.F. is a general savings clause which helps ensure that legal or policy requirements not expressly addressed in the agreement apply to the activity at issue. Nevertheless, to the extent practicable, when NPS is aware of an applicable law or policy provision that may be implicated by the agreement the provision should either be addressed in the body of the agreement, or in an attachment to the agreement. Further, where an agreement contemplates construction on NPS land, a significant array of laws, regulations, and policies relating to construction may apply. The Solicitor's Office can help identify relevant laws, regulations and policies and provide appropriate provision for

inclusion in an agreement of this type.

- F. *Modifications: All modifications to this Agreement shall be in writing and shall be signed by the Partner and the NPS.*

Provision XII.G. is self explanatory.

- G. *Disclaimers of Government Endorsement: The Partner will not publicize or circulate materials (such as advertisements, solicitations, brochures, press releases, speeches, pictures, movies, articles, manuscripts, or other publications), suggesting expressly or implicitly, that the Government, the Department, NPS, or Government employees endorse the Partner's work, services, or positions, or that the Partner's work or services are superior to work or services performed by others. All materials referring to the Government must be approved by the NPS Key Official prior to publication. Nothing herein is intended to prevent NPS or the Department of the Interior from recognizing contribution made by the Partner to NPS, and from authorizing, on a case-by-case basis, inclusion of such recognition in materials generated by the Partner.*

The Partner must obtain prior Government approval through the NPS Key Official for any public information releases which refer to the Department of the Interior, any bureau, park unit, or employee (by name or title), or this Agreement. The specific text, layout, photographs, etc., of the proposed release must be submitted with the request for approval

The first paragraph of Provision XII.H. is self explanatory. However, the provision is not intended to prevent NPS from publicly recognizing the generous contributions of its partners or donors. The Key Official should consult an Ethics Officer on all requests for publication of materials by partners to help ensure against the appearance of a conflict of interest.

- H. *Merger: This Agreement contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this Agreement*

Provision XII.I. is self explanatory.

- I. *Modifications: This Agreement may be extended, renewed or amended only when agreed to in writing by the NPS and the Association.*

Provision XII.J. is self explanatory.

- J. *Waiver: Failure to enforce any provision of this Agreement by either party shall not constitute waiver of that provision, nor a waiver of a claim for subsequent breach of the same type, nor a waiver of any other term of this Agreement. The waiver of any provision must be express and evidenced in writing.*

Waiver is a legal term used to describe a permission to take an action contrary to the terms of an existing agreement. A waiver can be: 1) formal, e.g., written permission to take an action; 2) informal, e.g., verbal permission to take an action; or 3) implied, e.g., a party is on notice that an action is occurring, or will occur, the action is inconsistent with the terms of an agreement, and the party fails to object in a timely way. Difficult partnership problems can arise when informal or implied waiver is alleged by one party and rejected by the other. Therefore, inclusion of the above provision in agreements is necessary and appropriate.

- K. Assignment: *No part of this Agreement shall be assigned to any other party.*

Provision XII.L. prevents one party from granting a third party the rights, or assigns a third party obligations created by the fundraising agreement. The agreement can be amended to permit assignment on a case-by-case basis if agreed to by all parties.

- L. Counterparts. *This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by facsimile transmission) as against the party signing such counterpart, but which together shall constitute one and the same instrument.*

Sometimes it is logistically difficult for all parties to sign the same agreement. Provision XII.M permits execution through the signature of separate copies of the agreement.

- M. No Lobbying for Federal Funds: *The Partners will not seek appropriations from Congress to support any ongoing or proposed Partner activity or project relating to the subject matter of this Agreement or sub agreements hereto, including without limitation federal appropriations for construction, renovation, property acquisition, leasing, administration or operations. Nothing in this paragraph is intended to preclude Partners from applying for and obtaining a competitive or non-competitive grant of federal financial assistance from a federal agency or from undertaking otherwise lawful activities with respect to any project or proposal included in the President's budget request to Congress; nor should this paragraph be construed as requesting, authorizing or supporting advocacy by nonfederal entities before Congress.*

Current NPS policy bars partners from seeking appropriations for partnership activities unless the activity is included in the President's budget to Congress. The foregoing provision implements this policy.

- N. Agency: *The Partner is not an agent or representative of the United States, the Department of the Interior, or NPS, nor will the Partner represent its self as such to third parties.*

Provision XII.O has been added to partnership agreement to help ensure that Partner's representations to donors, and partners actions respecting donations, are not misconstrued as representation by, or actions of, the Government.

XIII. Signatures

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above.

[For the National Park Service, Name, Title]

Date

[For the Partner, Name, Title]

Date

Include the name and title of each signatory to the agreement. Make sure that DO 21 is followed with respect to appropriate NPS signature levels Solicitor's Office surnames .

Reference and Contacts on Agreements for Partnerships:

Director's Order #20: Agreements at www.nps.gov/policy/DOrders/DOrder20.html

Agreement's Handbook at www.nps.gov/hfc/acquisition/agreements.html

Director's Order #21: Donations and Fundraising at
www.nps.gov/policy/DOrders/DOrder21.html

NPS Partnership Website at www.nps.gov/partnerships

Department of Interior Partnership Website at www.doi/partnerships

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TEL Course
Nov. 3, 2004

You may fax your question/comment at any time during the broadcast. Your question/comment will be read on air during the workshop (time permitting). Please do not add a cover sheet.

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Depending upon the number of submittals, we will air questions and comments in the order they are received.

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